IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8696 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

1 & 2 YES; 3 to 5 NO

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SULEMAN D KHRISTI - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR DHAVAL G NANAVATI for Petitioner(s) : 1,
MR KP RAWAL ASSTT GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 26/04/2006

ORAL JUDGMENT

1. By the present petition invoking Articles 14, 16, 19, 226 and 227 of the Constitution, the petitioner has sought to challenge the order dated 23.1.2006 of the Deputy Secretary of the Government,

by which the application of the petitioner for regularization of the period of suspension was rejected on the short ground that the period from 12.8.1992 to 4.9.1992 and 8.6.1998 to 30.4.2004 of deemed suspension could not be treated as the period spent on duty.

2. The relevant facts in brief are that, while the petitioner was serving as temporary work assistant, he was arrested on 12.8.1992 pursuant to a complaint filed on 15.2.1992 regarding murder and other offences. The petitioner was released on bail on 4.9.1992. Thereafter, by order dated 8.6.1998, he was held guilty and sentenced to imprisonment for life. On the basis of that conviction, the petitioner was dismissed from service by order dated 22.6.1998 with effect from 8.6.1998. The appeal preferred by the petitioner was dismissed by the High Court. However, the conviction and sentence of the petitioner was set aside by the Apex Court and the petitioner came to be reinstated. The petitioner made a representation to receive the service benefits accrued during the period of suspension from 8.6.1998 to 30.4.1994 and it came to be rejected by the impugned order.

3. The learned counsel relied upon the provisions of Rule 152 of the Bombay Civil Services Rules, 1959 which are *in pari materia* with Rule 70 of

the Gujarat Civil Services (Joining Time, Foreign Service, Deputation out of India, Payment during Suspension, Dismissal and Removal) Rules, 2002. The relevant parts of Rule 70 read as under:-

> *"**70. Regularisation of pay and allowances and the period of absence from duty where dismissal, removal or suspension is set aside as a result of appeal or review and such Government employee is reinstated:***
>
> *(1) When a Government employee who has been dismissed, removed or suspended is reinstated, the authority competent to make order of reinstatement shall consider and make a specific order:-*
>
> *(a) regarding the pay and allowances to be paid to the Government employee for the period of his absence from duty; and*
>
> *(b) whether or not the said period shall be treated as a period spent on duty.*
>
> *(2) Where the authority mentioned in sub-rule (1) is of opinion that the Government employee has been fully exonerated or in the case of suspension that it was wholly unjustified; the Government employee shall be given the full pay and allowances to which he would have been entitled had he not been dismissed, removed or suspended as the case may be.*
>
> *(3) ....*
>
> *(4) In case falling under sub-rule (2), the period of absence from duty shall be treated as a period spent on duty for all purposes".*

4. It is absolutely clear from bare reading of the above provisions, which are admittedly applicable in the facts of the present case, that a suspended

employee has to be given full pay and allowances to which he would have been entitled as if he had not been suspended only in case the suspension was wholly unjustified. In the facts of the present case, not only that the petitioner was involved in a serious criminal offence, but he was arrested and even convicted initially by the trial Court. Therefore, by no stretch could it be said that the Government was wholly unjustified in suspending the petitioner. In that view of the matter, the petitioner had no right to receive any pay or allowance for the period of his absence from duty, or for treatment of the period of his absence from duty as a period spent on duty.

5. As against the above clear factual and legal position, learned counsel Mr.Dhaval Nanavati, appearing for the petitioner, vehemently argued that, after acquittal by the Hon'ble Supreme Court, it should be clear to everyone that the petitioner was not guilty of any offence and he has to be treated as if he were an innocent person all throughout. He submitted that, when looked at from that angle, the Government cannot be said to be justified in suspending the petitioner even if he were at the relevant time imprisoned, or on bail, or dismissed from service.

5.1 The critical point of time at which the Government has to take a decision as to whether an

employee should be suspended is the point of reference for the purpose of application of the provisions of Rule 70 because, obviously, no authority can presume in advance that an employee who was arrested pursuant to a serious offence was most likely to be acquitted and decide not to suspend him on that basis. In the nature of things, a person who is arrested cannot attend his duties and, therefore, the statutory provisions for deemed suspension are made in the Gujarat Civil Services (Discipline and Appeal) Rules, 1971, as under:-

> *"**5.Suspension:-***
>
> ***(1)*** *The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered by Government in that behalf may place a Government servant under suspension:*
>
> *(a) Where a disciplinary proceeding against him is contemplated or is pending, or*
>
> *(b) Where a case against him in respect of any criminal offence involving moral turpitude is under investigation, inquiry or trial;*
>
> ***Provided*** *that where the order of suspension is made by an authority subordinate to or lower in rank than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made.*
>
> ***(2)*** *A Government servant shall be deemed to have been placed under suspension by an order of appointing authority-*
>
> *(a) with effect from the date of his*

detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight-hours.

(b) with effect from the date of his conviction if, in the event of conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent upon such conviction.

***Explanation:-** The period of forty-eight hours referred to in clause (b) of this sub-rule shall be computed for the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account.*

***(3)** Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant under suspension is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force with effect on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.*

***(4)** Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside or declared or rendered void in consequence of or by a decision of a court of law, and the Disciplinary Authority on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant shall be deemed to have been placed under suspension by the appointing authority, from the date of the*

original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

(5)*(a)An order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority competent to do so.*

(b)Where a Government servant is suspended or is deemed to have been suspended, in connection with any disciplinary proceeding or otherwise and any other disciplinary proceeding is commenced against him during the continuance of such suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the Government servant shall continue to be under suspension until the termination of all or any of such proceedings.

(c) An order of suspension made or deemed to have been made under this rule may at any time be modified or revoked by the authority which made or is deemed to have made it or by any authority to which that authority is subordinate."

Therefore, even the discretion to decide whether suspension was justified or unjustified at the point of time when a government servant is detained in custody is taken away by law and, in such cases, there is no alternative but to hold that the suspension of the petitioner was not wholly unjustified when, by operation of law and in view of the factual reality of the petitioner being in jail and convicted thereafter, he had to be treated as suspended.

6. Learned counsel Mr.Nanavati relied upon a

judgment of this Court in **M.V.CHAUHAN v. STATE OF GUJARAT [2000 (1) GLR 909],** where the issue was altogether different and, to quote from that judgment: *"Truly speaking, it is not a case of inviting application of Rule 152 at all".* Another judgment of this Court in **A.A.BOHRA v. STATE OF GUJARAT [2003 (3) GLR 2756]** was relied upon to submit that suspension is not a punishment but an interim measure and while denying the benefit of Rule 152 of the Bombay Civil Services Rules, the authorities were required to give an opportunity of being heard and make a reasoned order. The ratio of that judgment does not apply in the facts of the present case on account of the fact that the authority had, by the impugned order, decided the application and representation of the petitioner wherein a specific plea for hearing was not made. It was after the original order dated 27.4.2004 ordering reinstatement of the petitioner after acquittal and refusing regularisation of the period from 8.6.1998 that the representation was made. If the petitioner had a grievance against the relevant part of that order, he could have immediately or within a reasonable period challenged that part of the order. That having not been done, the present petition clearly appears to be an after-thought and a belated attempt at capitalizing on the order of acquittal stated to have been recorded by the Supreme Court. Therefore, there being no legal basis for the prayers

and claims made in the petition, it is dismissed *in limine.* *Sd/-*

(D.H.WAGHELA, J.)

(KMG Thilake)